

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SANTOS LEC CUMES, and
JUAN JOSE COJTIN BOCEL,

Case No.: 17 CV 7377
(GHW)

Plaintiffs,

- against -

JAIYA U.S.A. INC., and JAI-YA NEW YORK, INC.,
doing business as JAI YA THAI AND
ORIENTAL RESTAURANT, and
VIRACHART POKPOONPIPAT, individually,

Defendants.

Statement to the jury prior to openings.

This case is brought by two former employees of Jaiya U.S.A. Inc. and Jai-ya New York, Inc., two Asian restaurants located on the East Side of Manhattan.

Their hours, duties and compensation are disputed by the parties.

There is no dispute that at least part of their job was to deliver food to customers. The plaintiffs also assert that they did a significant amount of non-tipped work and for that reason, as well as other reasons, they should have been paid at least the full minimum wage under New York Law.

The plaintiffs also assert they are owed overtime for which they were not compensated.

And the plaintiffs assert that their work dates spanned more than ten (10) hours a day.

The defendants do not dispute that both Plaintiffs were employees of the restaurants and that they worked certain overtime hours per week. Defendants assert that plaintiffs were paid minimum and overtime wages in full in accordance with the law's requirements as it applies to

tipped employees. On the occasions when Plaintiffs did not perform tipped occupations, they would be paid extra for their work.

The Labor Law regulations require employers to furnish a statement to employees with every payment of wages listing hours worked, rates paid, gross wages, any allowances claimed as part of the minimum wage, deductions, and net wages. However, it is a defense for the employer to show that they made complete and timely payment of all wages due to the employee who was not provided with such statement of wages. It is also another defense for the employer to show that they reasonably believed in good faith that they were not required to provide the employee with such wage statements.

[Plaintiffs request/ defendants object: Employers are also obligated to maintain and preserve payroll records, for at least six (6) years under New York Law.]

Neither the employer nor the employee can agree to waive the minimum wage and overtime requirements under federal and state labor laws. **[Plaintiffs request/ defendants object: And the laws apply equally to immigrants—whether the immigrant is the employer or employee, or both.]**

Overtime is generally defined as any employment in excess of forty (40) hours in a single workweek. The laws require an employee to be compensated at 150% of his regular rate of pay for all hours worked in a workweek over forty (40) hours.

With respect to tipped employees, such as delivery drivers, an employer is allowed to take a so-called “tip credit” against the employee’s wages, meaning that the employer is allowed to pay the tipped employee at a wage rate below the minimum wage, provided that the wage and the employees’ tips, taken together, are at least equivalent to the minimum wage. In addition, employers are allowed to take a tip credit with respect an employee’s non-tipped work (such as

cleaning, cooking etc.), provided that such work does not exceed 20% of the employee's shift time.

[Plaintiffs request/ defendants object: Calculating damages will not be required of you in this case. We will only ask you to resolve some factual disputes about the Plaintiffs hours and pay.]

The parties join me in thanking you for your service this week and we will strive to make it as efficient as possible by starting on time and maximizing your time so we can finish as quickly as possible.